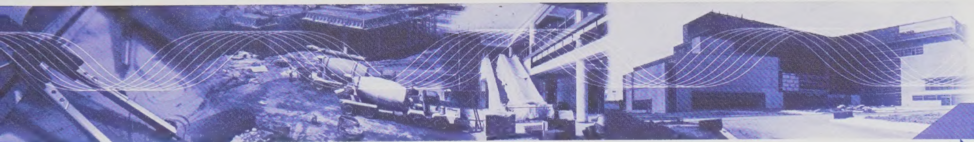
Ontario
SuperBuild



A Guide to Public-Private Partnerships for Infrastructure Projects

January 2001

Building Ontario's Future

Purpose

This guide is intended to help asset managers, planners and decision-makers in the public and non-profit sectors to select and implement infrastructure projects in partnership with the private sector. This is the first in a series of Ontario SuperBuild Corporation publications intended to help further informed dialogue about public-private partnerships (P3) among interested stakeholders.

Acknowledgement

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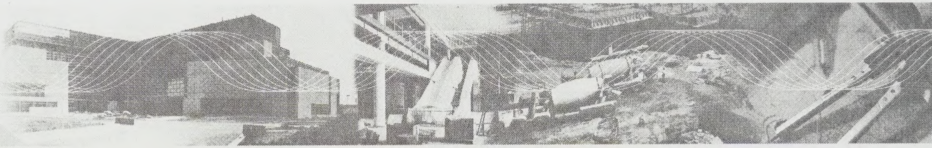


1 Introduction

We must prepare ourselves for the future by prudently building and maintaining the physical assets that support our quality of life. Such "infrastructure" includes everything from roads and hospitals to new technologies and water systems.

A. Background

The Minister of Finance announced the SuperBuild initiative in the 1999 Ontario Budget to meet the Province's infrastructure challenges. SuperBuild is a new and more strategic approach to infrastructure planning and investment in Ontario. SuperBuild emphasizes a partnership approach to infrastructure development between the Province, private sector and broader public sector (BPS) - municipalities and public institutions such as hospitals, school boards, colleges and universities.

SuperBuild is a five-year $20-billion initiative. The provincial government will invest $10 billion in capital infrastructure through SuperBuild between 1999-2000 and 2004-2005. Another $10 billion or more of investment will be leveraged from private sector and other partners over the same period. SuperBuild infrastructure priorities include the expansion and renewal of Ontario's transportation, post-secondary-education, health-care, environmental-protection and technology infrastructure.

The new Ontario SuperBuild Corporation, an agency of the Ministry of Finance, is mandated with:

- leading the Government of Ontario's capital-planning and policy-development processes;
- evaluating and making recommendations to the Cabinet Committee on Privatization and SuperBuild (CCOPS) on infrastructure partnership, privatization and commercialization proposals;
- developing new strategies to strengthen the capacities of the Ontario Government and its BPS partners to attract private-sector financing and support for traditionally public infrastructure; and
- reporting publicly on SuperBuild investment priorities, capital plans and results.

The Ontario SuperBuild Corporation has a President and Chief Executive Officer. The SuperBuild Board of Directors, drawn from the public and private sectors, provides the corporation with strategic direction and advice.

Throughout North America, all major jurisdictions are looking at various ownership options for public assets and services, up to and including full divestiture. SuperBuild is applying the same approach to many provincially owned assets and services.

B. The P3 (Public-Private Partnership) Approach

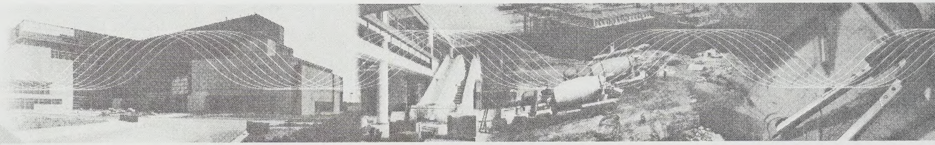
Ontario has close to $200 billion worth of infrastructure. About half is publicly owned; the other half is privately owned (such as communications, railways, gas lines, etc.) but publicly regulated.

Although the province is enjoying a great period of prosperity, there is a need to prepare for the future by prudently building and maintaining the physical assets that support our quality of life. Such physical assets include roads, hospitals, new technologies, water systems, etc. Increasingly, it is apparent that the level of investment in existing and new infrastructure is not sufficient to maintain service levels for current and future needs. At the same time, there is an increasing trend toward long-term asset planning and innovative financial arrangements that maximize value to taxpayers. A public-private partnership (P3) is an approach actively supported by SuperBuild that can achieve these goals.

In fact, P3 is not one approach, but rather a range of possible options including:

- service or management contracts,
- design-build construction projects,
- design-build-operate-transfer concessions,
- design-build-own-finance-operate-transfer concessions, and/or
- divestiture.

While these options differ significantly with respect to the challenges involved, they share many issues that often arise in selecting and implementing appropriate projects.



C. Benefits and Considerations

Much has been written about the benefits of P3 projects. Below is a list, by no means exhaustive, of some of the key benefits from the perspective of a public-sector proponent.

- Risk sharing
- Maintaining or improving service levels
- Reducing costs/improving revenue
- Accessing new sources of capital
- Accessing new or better skills
- Realizing the value of under-utilized assets
- Realizing economic-development opportunities

Nevertheless, not all public infrastructure projects may be suitable for a P3 approach. The following factors should be considered by both private and public sectors before pursuing a P3 project.

- The value of a P3 project to taxpayers should not be based solely on the lowest cost of financing, but should also take into account potential for economic development, creating taxable wealth, stimulating innovative solutions and other non-financial benefits.
- The public sector should still maintain control over the determination of public needs, priority setting and other public-policy elements, even though a project is carried out using a P3 approach.
- The respective roles and responsibilities of government and the private sector for specific projects or classes of projects should be determined based on which party is best suited to play which role.

2 Selecting the Right Projects

This section provides a framework for the public sector to select the right projects for a P3 approach. The framework, however, can be used by both the private and public sectors in assessing public-sector projects.

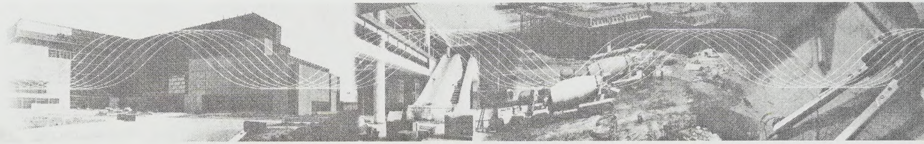
A. Establishment of Criteria

The framework consists of a series of six criteria that collectively define the conditions to be used to pick a project as a viable candidate for a public-private partnership approach. The six criteria are as follows.

- **Financial** - Is it likely that a partnership between government and the private sector will be able to carry out the project under financial terms which are acceptable to both?
- **Technical** - Is it reasonable to expect that a technical solution to the project can be found using a P3 approach?
- **Operational** - Are there operational hurdles that prevent a P3 approach from being used?
- **Acceptability** - Will the public accept the involvement of the private sector in implementing the project?
- **Implementation** - Are there implementation barriers that prevent the use of a P3 approach?
- **Timing** - Are there time constraints that would pre-empt consideration of P3 procurement?

In general, any project which appropriately addresses the above criteria should be pursued as a suitable candidate for P3 and represents a project in which the public sector is most likely to achieve the benefits of a P3 procurement.

Within each of the six criteria, there are specific questions that can be used to help determine whether a project makes sense.



B. Financial Criteria

Generally, completion of a project using P3 will have different costs than if the project were to be undertaken using a conventional public-sector implementation process. These differences are related to the role that the private-sector partner is being asked to play, the risks that are being transferred to the private-sector partner and the returns the partner expects to receive from the project. In assessing whether a project is a good candidate for P3, the public sector should assess the range of financial issues associated with using a P3 approach. For example:

1. *Is the project financially viable and can it function on a stand-alone basis?*

A private-sector partner expects that the financial return of the project will reflect the level of risk and effort. This includes consideration of:

- market demand,
- pricing risk,
- revenue risk,
- capital costs,
- operating risk,
- financing costs,
- legislative risk, and
- other factors affecting financial performance of a business.

In general, the private sector's primary motive in any venture is to earn a return commensurate with the risks it undertakes and its performance on the project. To do this, it is important to develop an effective risk-management approach that fairly and efficiently allocates each risk to the party best able to manage it.

Experience has shown that a significant number of P3 projects require some form of government support. This support can be any of a range of options including: financing with recourse to Crown credit, subsidies, the payment of a portion of the project's cost (e.g. land acquisition) and revenue guarantees. A feasibility analysis should also consider private-sector financing, including recourse to a parent company.

In any case, a critical factor in determining the viability of screening a potential P3 project requires the public sector to carry out a thorough business-case analysis of the project from its own perspective as well as from the private-sector perspective.

Without a doubt, public-private investment partnerships will play a big role in eliminating Ontario's "infrastructure deficit." SuperBuild is helping to broker partnership arrangements between provincial ministries, municipalities and institutions with private investors. We're also providing guidance on how to structure such partnerships so that the public interest is protected.

Without such an analysis, the public sector runs the risk of bringing a financially unattractive project to the marketplace and receiving no acceptable offers.

2. Is it possible to define an equitable and appropriate rate-setting mechanism?

Potential bidders (and lenders) need to be assured that there are appropriate mechanisms in place to adjust the pricing to reflect changes in parameters such as general inflation, the cost of specific inputs and interest rates. An appropriate rate-setting mechanism addresses the issues of financial self-sufficiency and public acceptability of the project (i.e. prevents the private partner from misusing or abusing a position of privilege). Can a rate-setting approach be developed that is sufficiently robust and predictable to encourage bidders to bid and the partner to behave appropriately?

C. Technical Criteria

1. Does the project have any inherent technical constraints that cannot be solved by a private partner?

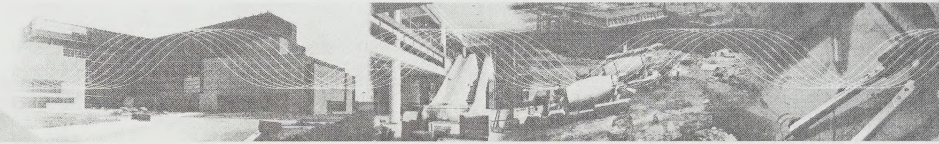
Unresolved technical considerations (e.g. design and construction) can prevent potential bidders from delivering the required product or service. Such technical restrictions must be resolved by government before the project will be considered by the private sector as a feasible and attractive opportunity. Of course, these restrictions might also prevent a project from proceeding using conventional procurement. It is important to identify any technical risks that might render the project unfeasible.

2. Can the public sector develop appropriate technical specifications for the project?

Often, the adequacy (or inadequacy) of the technical specifications is not discovered until bids have been received or, worse still, until after the deal has been signed. Similarly, unforeseen circumstances can arise that were not considered in the initial project definition. Incomplete and/or inappropriate technical specifications for inputs or outputs may understate the full cost of the project or may make operational requirements unachievable.

3. Can appropriate mechanisms be established to monitor partner performance?

Can appropriate measures be implemented to assure government that the project, as implemented, will meet the technical, operational and other requirements?



D. Operational Criteria

1. Can the public-sector organization develop appropriate operating standards for the project?

Identifying and articulating operating and maintenance standards is an important component of the detailed project plan. The standards need to consider both the inputs into the project as well as the outputs generated by the project. The inputs include all relevant elements within control of the public-sector organization (or for which the public-sector agency is best able to assume the risk) that feed into the project. The outputs include all relevant elements within control of the developer that flow from the project. Inaccurate or incomplete operating specifications may lead to costly amendments to the legal agreements or sub-optimal operation and maintenance of the asset, potentially reducing the residual value of the asset at reversion. Can appropriate standards be developed and communicated?

2. Are there any operational issues that cannot be realistically addressed by a private partner?

Unresolved operational considerations can prevent potential bidders from delivering the required product or service at an appropriate cost. An example of this type of operational consideration is a change in legislation dealing specifically with the project. No reasonable developer would "bet the farm" on a project in which an adverse change in, say, environmental regulations could result in insolvency. Such operational restrictions must be resolved by government before the project will be considered as a feasible and attractive opportunity by the private sector. What are the operating risks in this regard and how can they be allocated and managed?

3. Can the private partner be held accountable for appropriate performance?

Can mechanisms be put in place that encourage the private partner to continue to operate and maintain the asset appropriately? Accountability for performance should be made part of the operational considerations and measured regularly during operations.

These are some of SuperBuild's most recent partnership initiatives:

- *SuperBuild Millennium Partnerships will invest $1 billion over five years in public-private partnerships for strategic infrastructure in Ontario's large urban areas.*

- *Ontario Small Town and Rural Development will invest $600 million over five years in infrastructure that supports the economic growth and quality of life of small cities, towns, and rural areas.*

- *SuperBuild Sports, Culture and Tourism Partnerships will invest $300 million over five years to rebuild and enhance local sports, cultural and tourism facilities. This initiative will also invest in Ontario's major cultural and tourist attractions.*

E. Acceptability Criteria

1. Is the public willing to accept a P3 approach and the involvement of the private sector in the project?

Risks associated with public acceptability and, specifically, the ability of the public to materially impact a project, are not generally risks that private sector developers are well equipped to manage.

2. Are elected officials willing to accept a P3 approach?

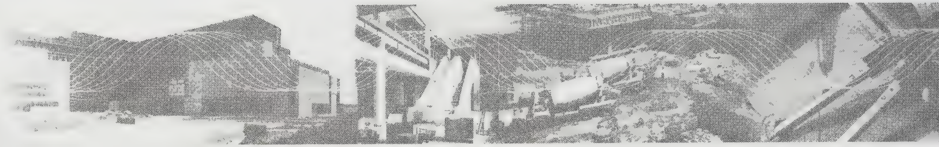
In assessing the opportunity presented through a P3 project, potential bidders look for tangible signs that the project, and use of a P3 approach, have strong political commitment and support. A half-hearted or disorganized P3 project—or failure to provide sufficient reasons for failing to proceed with awarding the contract—can undermine a government's ability to muster future private-sector interest in P3 opportunities.

This issue arose recently with a large municipality that decided to seek proposals for the operation of a public facility. The municipality received bids from potential private-sector partners, analyzed the responses and identified the preferred bidder. The councillors then decided to debate at council whether the idea of involving a private-sector operator should be pursued at all. Were the elected officials willing to accept the reduction in direct control in a P3 approach?

The key issue is to assess how accountable the public sector will be for the ongoing performance of the project. If the public sector is held highly accountable for project performance, elected officials will not be as willing to relinquish control.

3. Are other stakeholders willing to accept a P3 approach and the involvement of the private sector in the project?

Where a government product or service is an integral component of a larger system, acceptance of other stakeholders within that system must be considered. For example, although the provision of land ambulance services may represent a viable opportunity for a P3, its success or failure would be contingent upon the support of hospitals and the medical profession.



4. *Are public-sector staff willing to accept a P3 approach and the involvement of the private sector in the project?*

Public-sector-staff acceptance of P3 approaches is likely to be high for public-sector products and services that have traditionally been contracted out. In less traditional areas, concerns over job security and the disruption to the normal work environment may generate substantial resistance. Moreover, are the senior staff willing to accept the reduction in direct control implicit in a P3 approach? If there is a lack of commitment to the project at the senior-staff level, this will pose a significant challenge to the success of the P3 project.

F. Implementation Criteria

1. *Is it possible to generate meaningful competition in a P3 procurement?*

There needs to be an adequate pool of private-sector bidders who would be interested in and capable of pursuing the opportunity. But, what if one potential bidder has a perceived or real advantage that would effectively discourage other potential bidders from pursuing the opportunity? If so, a "standard" competition method of procurement would be inappropriate. Benefits may still flow from a P3, but based on direct negotiation.

2. *Is the project free of jurisdictional or liability issues that prevent a public body from using a P3 approach?*

Various projects that might be pursued using a P3 process are governed by a web of legislative, regulatory and policy constraints that might preclude a P3 approach. In the United States, for example, federal airport-operating subsidies are contingent upon public ownership and control of the facility. Before pursuing a P3, the public sector must satisfy itself that it has the necessary legal authority to implement a P3.

3. *Can an internal project champion be found?*

P3s require substantial time, effort and skill to co-ordinate the feedback and support of elected officials and staff from many departments. Failure to identify and empower a strong project champion is an all-too-frequent contributor to unsuccessful P3 processes. Conversely, the support and stewardship of a strong project champion can help overcome many seemingly overwhelming barriers. This applies not only during project development but also during implementation and operation.

In general, accessing the required expertise from public-sector staff to develop and implement a P3 proposal has proven to be a significant challenge. Most public-sector organizations have not organized themselves and have not developed appropriate policies and procedures to be able to carry out P3 projects effectively.

4. Can the project champion access the resources necessary to be a competent partner?

A substantial up-front and ongoing effort is required to muster an effective P3. The project champion has to act as an overall project manager and coordinate the detailed work of a range of specialists while anticipating the requirements of outside stakeholders. No one can do it alone; all successful project champions must have the support of a strong project team. The project team may include a mix of government staff and external advisors.

5. Can a successful transition plan be developed?

Some P3s involve the transfer of ongoing operations from government staff to a private partner. The risk of an unsuccessful transfer may outweigh the expected benefits of using P3 procurement. This has proven to be a substantial issue when the transition involves the transfer of large numbers of government employees to a private partner, requiring all of the various labour and union issues to be addressed successfully.

G. Timing Criteria

1. Are the time lines adequate to develop operating specifications?

Identifying and articulating operating specifications are important components of the detailed project plan. Inaccurate or incomplete operating specifications may lead to costly amendments to the agreement or sub-optimal operation and maintenance of the asset, potentially reducing the residual value of the asset at reversion, if applicable.

3 Implementation and Operation of Selected Projects

Many public-sector organizations have identified a project suitable for a public-private partnership approach but failed to deliver the benefits because of flaws in the implementation and operations processes. This chapter addresses implementation and operations challenges.

A. Procurement Principles

An appropriate process for the formation and administration of public-private partnership must be established and managed on a set of policies and principles that govern the relationship.

The key requirement in designing and implementing a procurement process is to strike an appropriate balance between value and fairness. On the one hand, a public-sector organization wishes to ensure that it receives the best bids possible and can demonstrate value for money from the process; on the other hand, it is essential that the process be seen by all to be fair, open and transparent.

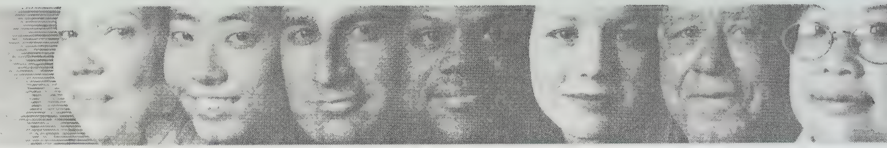
While this may sound like a difficult juggling act, the fact is that the public sector does not have to trade fairness for value as long as the process is carefully and thoughtfully designed and administered.

To bring to life this fundamental requirement, a set of detailed principles is required. These principles will guide the process and will address issues such as ensuring that:

- all bidders have the same opportunity to access information,
- sufficient information is disclosed,
- the evaluation process and criteria are established and articulated before the bidding process begins, and
- the pre-established evaluation process and criteria are followed.

Specific steps that can be taken to implement the principles include the following.

- Ensure that fundamental public policies have been established and communicated to bidders and the public before a Request for Proposals (RFP) is issued. Value is lost when bidders are forced to guess at the public-sector organization's objectives, or when a public body attempts to "use the market" to tell it what to do.
- Identify and work out in advance the important public policy trade-offs to be made.



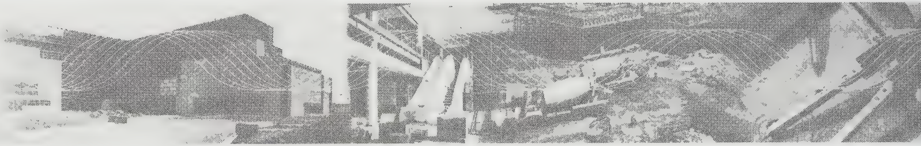
- Have public policy debates in private and not in front of bidders during the competitive process.
- Ensure that the perspectives of the public sector and potential bidders are addressed and that conflicts over these perspectives are resolved.
- Develop an appropriate response to the significant labour-force issues that are involved with privatization.
- Design a fair P3 procurement process, while not bogging it down in excessive red tape.
- Establish "value for money" by developing an appropriate reserve bid which can be compared on an "apples-to-apples" basis with the offers of potential purchasers.
- Assist with due diligence both before and after the fact.
- Maintain the confidentiality of public- and private-sector matters.
- Provide the bidders with full and plain disclosure.
- Help enhance the staff function (e.g. by retaining consultants), increasing the speed and quality of analysis and bringing a critical intelligence to public-policy issues on a timely basis.

B. *Project Organization*

Due to its complexity, the process for a public-private partnership requires organized responsibility and approval processes among the numerous personnel involved. Certain responsibilities and approval practices have proven to be most suitable in ensuring fairness to proponents and to government, while not compromising value.

The roles of public-sector staff in the procurement process involve participation in any of the following teams.

- Project Team
- Evaluation Teams
- Due-Diligence Team
- Steering Committee
- Process Auditor
- Executive (cabinet, municipal councils, school and hospital boards, etc.)
- Ongoing Management



The membership of the due-diligence team, the steering committee, the process auditor team and executive should not overlap with each other or with any other team to ensure an appropriate system of checks and balances. The descriptions and roles of these teams are as follows.

I. Project Team

Ideally, the project team is a dedicated full-time team (especially for large or high-profile projects) that designs and administers the procurement process from project approval through finalization of the legal agreements with the successful proponents.

The project team operates under the direction of a project manager and with the assistance of relevant government departments and outside advisors. Relevant government departments include, as required, the line department as well as departments with responsibility for finance, land acquisition, environmental management, municipal affairs and economic development. Outside advisors include, as required, legal advisors, process advisors, accounting advisors, transportation advisors, engineering advisors and financial advisors.

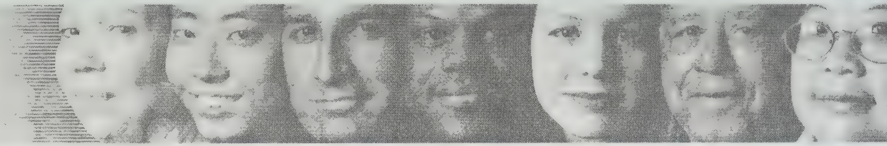
The project manager should be someone who is respected by all in the organization, sufficiently empowered and a natural leader.

II. Evaluation Teams

The evaluation teams develop and apply detailed evaluation criteria in accordance with the general evaluation criteria stipulated in the request for qualifications (if any) and in the request for proposals. They work under the direction of the project manager, who is typically an *ex-officio* member of each evaluation team. There are a number of evaluation teams because of the various categories of technical requirements (e.g. financial, technical and managerial requirements). The number of teams can vary according to the anticipated complexity of the proposals and the size of the project. The evaluation teams may generate clarification questions for proponents to be managed through a formal question-and-answer process.

III. Due-Diligence Team

The due-diligence team provides a support function to the entire process. Its job is to satisfy itself regarding all relevant matters, both content and process, thereby acting as the first independent and in-depth check of the various aspects of the project. The due-diligence team should have access to all documentation associated with the procurement process, including bid submissions and evaluation worksheets.



Under the Ontario Government's new capital-planning process, coordinated by SuperBuild, ministries are required to take stock of the age, condition and value of capital assets, and future capital needs, and submit this as part of their analysis.

All approvals for capital plans by ministries must be funneled through SuperBuild to a special cabinet committee. The same requirement will be applied to municipalities, hospitals and universities—they must also do long-term capital asset plans.

This team generally includes both in-house staff and outside advisors. They all have the ability to successfully carry out due-diligence investigations on a complex undertaking.

IV. Steering Committee

The steering committee, typically made up of senior staff from the relevant government departments, receives reports from the project team and the due-diligence team, and adopts any further inquiry that it deems fit. As well, it receives reports from the teams regarding various aspects of the process including, for example:

- request for qualifications,
- request for proposals,
- evaluation process and criteria,
- disqualifications, and
- other process issues.

This committee also provides policy guidance regarding the project from concept stage through to the end of the contract.

V. Process Auditor

This team serves to audit the government procurement process and to provide an independent written report, qualified as necessary, on the integrity of the process. The goal is to confirm the fairness of the process. Depending on the size and nature of the project, it may be best to ensure the independence of the auditor's role by staffing it from outside government.

VI. Executive

For major projects, provincial cabinet, municipal councils, boards of directors, etc. normally receive and ratify recommendations made to it by the steering committee, including the selection of the successful bidder. Not knowing the name of the bidder often enhances the overall fairness of the process.

VII. *Ongoing Management*

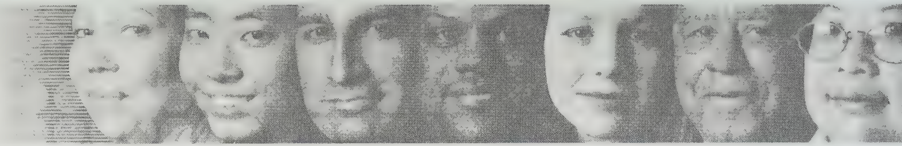
Certain members of the project team will continue to work with others (post award) in an ongoing relationship-management team up until the end of term. It is important that knowledge gained during the procurement process not be lost and that sufficient resources be made available to the team to ensure that the public entity can:

- be a competent partner to the private-sector party;
- effectively discharge its public-policy obligations; and,
- exercise effective oversight over the private partner.

Ongoing management is an often-forgotten matter in P3 projects.

There are several important considerations with respect to the roles of public-sector staff in the P3 approach.

- The workload and staffing requirements, which vary by project size, should not be under estimated. For large or high-profile projects, the project team and the project manager would normally be dedicated to the project full time. Non-project responsibilities and commitments should be minimized.
- The project manager should be a person with the technical and interpersonal aptitude to gain the respect and secure the participation of the members of the project team, members of other government departments, outside advisors and senior executives.
- The project manager should be empowered to exercise the functions required of the position with a broad mandate.
- The important strategic and policy debates related to a project should be resolved, and the conclusions of those debates committed to, both at the political level and at the level of senior administration, before the procurement process begins. Backtracking during the procurement process should be avoided as much as possible, especially once government resources have been committed and expended, and once prospective proponents have begun to place reliance on requests for qualifications (if any) and requests for proposals.



C. *Project Plan*

Before any detailed work on selecting a partner is initiated, there needs to be a clear understanding among all the relevant parties of the specific objectives and scope of the project.

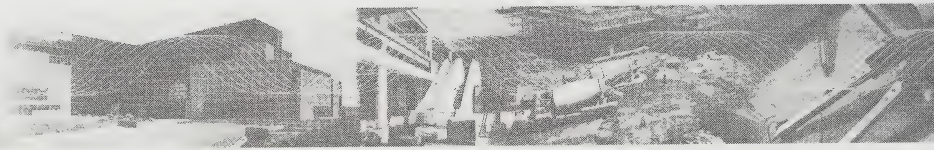
The project team, in defining the objectives and requirements, will initially debate the various tradeoffs and constraints associated with the project. The questions that need to be addressed at this stage include the following.

- What is the project scope (addressing technical, operational, managerial and financial issues)?
- What is the term of the arrangement?
- What legal structure is to be used?
- What sorts of bidders are being sought?
- How competitive is the marketplace for these types of bidders?
- Where/how should ingenuity be sought/permitted, and where should the public-sector organization set out specific requirements?
- How much risk should/can be transferred to the private sector?
- How much ability to direct/control does the government want/need?
- How involved does the government wish to remain in the success or failure of the venture?

In doing this work, the project team will not only debate these issues internally but will also typically need to consult with senior management, outside experts and other stakeholders, as appropriate. One of the benefits of going through this process is that it requires many organizations to revisit their current standards and practices to ensure that the specific requirements being transferred to the private-sector partner are appropriate. This is especially the case where the service is currently delivered internally. Making standards, service levels and practices more explicit can often generate changes to the conventional in-house ways of providing a service. Sometimes this is a side-benefit in itself as a result of a P3 process.

In the balance of this section, we describe the project plan in four phases:

- scoping the project,
- selection process,
- negotiations, and
- implementation and operation.



I. Project Scope

In line with the above discussion, it is critical that the project scope be fully defined at the beginning of the process. The structure used in the previous chapter is applicable here with respect to defining the scope; specifically, the scope of a project can be defined with respect to the following categories.

- Financial
- Technical
- Operational
- Acceptability
- Implementation
- Timing

II. Selection Process

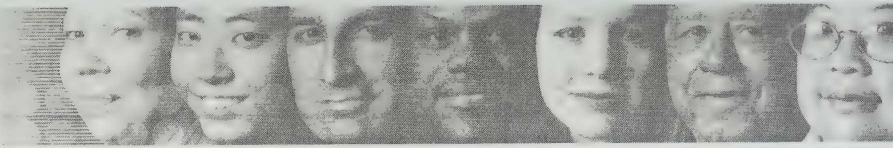
After the project scope has been established, the project team must turn its attention to developing and documenting the selection process. Essentially, the project team must now establish its strategy or game plan in advance of actually commencing the process. The game plan, if followed, is the main tool to select the best partner and to defend the process from challenge.

Given the range of issues that may arise in a complex process, the authors of the process need to possess considerable experience in similar undertakings. The public sector must employ the right mix of internal and external experience. Retaining this internal expertise is a key challenge.

In various public-sector organizations, some of the issues relevant for the process framework are addressed in the organization's procurement policies. While these general policies often provide useful input for the development of the framework, the general policies are often inappropriate for a P3 arrangement and, therefore, it may be necessary for the project team to develop tailored process documentation. In general, public organizations are quite good at enumerating their own requirements, but quite weak at thinking like a bidder.

The process framework outlines the various elements of the public-private partnership process including:

- number of stages (e.g. an RFP versus an RFQ plus an RFP);
- evaluation criteria;
- process for conducting bidder briefing sessions;
- process for responding to bidder questions;



Imagine a business person or tourist returning home from a trip to Ontario and being asked about their experience. Picture two possible answers:

- *"It was horrible. Nothing works there."*
- *"It was fantastic. The place functions as smoothly as clockwork."*

It's not hard to see the impact of these perceptions on Ontario's image. We want all people—international visitors, investors, other Canadians and Ontarians themselves—to feel confident that Ontario's economy does indeed run as smoothly and predictably as clockwork.

- confidentiality and security procedures; and
- conflicts of interest.

i) Number of Stages

The issue is whether to use a one-stage process or a two-stage process. A one-stage process combines the processes of pre-qualification and bidding into one. A two-stage process separates the pre-qualification and bidding into two stages. In general, a two-stage process is appropriate where considerable effort is required by the bidders to submit a complete proposal; the public sector would benefit by having a more competitive effort by bidders which, in turn, is more likely if they know they have been short-listed to a reasonable number.

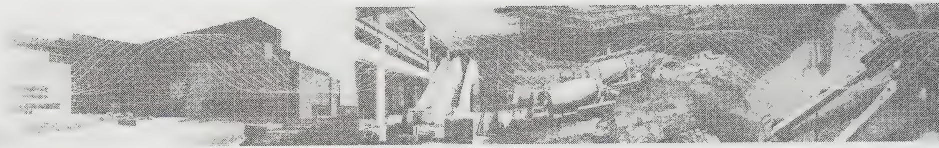
Accordingly, the main advantage of a two-stage process is that better bids are expected if considerable effort is required. The main advantage of a one-stage process is that the public-sector organization can never be certain that it eliminated a viable bidder in the first of a two-stage process — someone who could have generated a better bid than the ultimately successful bidder.

This trade-off needs to be considered in the context of the specific circumstances of a particular project.

ii) Evaluation Criteria

One benefit of a well-defined project scope is that the development of evaluation criteria should be reasonably straightforward. Typically, the evaluation process adopts a series of "pass/fail" criteria which determine if a bidder is capable of delivering and can meet all of the requirements of the project. These are accompanied by a "simple criterion" which is used to determine the winner among the compliant proposals. This simple criterion is often lowest cost/highest offer.

The development of detailed evaluation criteria before or during the development of an RFP (Request for Proposal) is highly advisable. Doing so helps to avoid errors creeping into the RFP. Unfortunately, and somewhat surprisingly, evaluation criteria are often treated as an afterthought. The criteria should be as detailed as possible, to enhance the defensibility of the process.



iii) Process for Conducting Bidder Briefing Sessions

This issue involves the need to document the "rules of the game" around bidder briefing sessions, including:

- the creation of minutes,
- the need to be bound only by the minutes, and
- registration procedures.

iv) Process for Responding to Bidder Questions

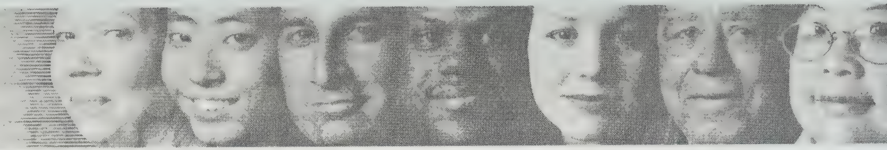
A well-written request for proposals should anticipate questions that might be asked by bidders. However, it is not always possible to anticipate all questions. Accordingly, an appropriate process should be developed to ensure that bidder questions are handled effectively. This process should be based on a series of principles regarding how to respond to questions, and should be carried out by an appropriately resourced group of individuals with access to the required information sources.

v) Confidentiality and Security Procedures

Given that the selection outcome may have significant financial implications for the bidders, appropriate confidentiality and security issues must be addressed.

Confidentiality of information in the process needs to address who is to keep what confidential from whom and in what manner. There may be important reasons to maintain the confidentiality of certain information related to public policy and the protection of proprietary information and intellectual property. However, these reasons must be appropriately counter-balanced against reasons for disclosing information related to the project.

For public-sector organizations to effectively deal with P3 arrangements on an ongoing basis, it may be advisable that freedom of information legislation be thoroughly reviewed for due diligence.



SuperBuild considers investments to be "strategic" when they:

- *provide breakthrough opportunities for growth,*
- *connect business to key export markets,*
- *enable major productivity gains or quality improvements in public services,*
- *solve crises and alleviate bottleneck pressures,*
- *replace or re-construct a critical class of capital assets, and/or*
- *re-invent the way infrastructure business is done.*

vi) Conflicts of Interest

Conflicts of interest, both real and perceived, must be closely monitored. For example, members of the evaluation teams should have no financial interest in the outcome of the process. A process for the confidential documentation and monitoring of relationships needs to be developed so that there are no unfortunate surprises.

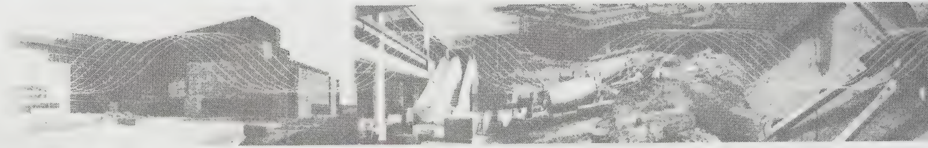
III. Negotiations

Some private-sector bidders utilize the strategy of doing what is necessary in order to be selected during the procurement process and then endeavoring to negotiate their way out of commitments during the negotiations of the final agreement. This strategy has proven to be successful in certain instances when a public-sector organization has lost leverage in negotiations because it does not wish to have to reverse an announcement as to the identity of the successful bidder. In many circumstances, the public sector should maintain a competitive process to the maximum extent possible during the negotiations.

The best way to do this is to issue the agreements in final form before receipt of the proposals. Such an approach should involve appropriate consultation with the proponents to ensure that an "even-handed" agreement has been generated. This approach works especially well when the project is thought of in terms of a series of "pass/fail" requirements and the winner of the process is the one that offered the best financial offer among those that met the requirements. However, in certain circumstances, some form of "customizing" is necessary and advisable.

Here are some additional tips for successful negotiations.

- Utilize the project team to lead the negotiations (do not negotiate in ignorance).
- Empower the project team (both with expertise and resources).
- Ensure that the public-sector organization is prepared to "walk away" from the offer.
- Ensure that commitments made during the proposals are measurable.
- Assess and address, as appropriate, the proponent's perspective.



IV. Implementation and Operations

Backtracking on proposal commitments during negotiations is one common strategy used by private-sector proponents. Another is to agree to such items during the negotiations and then to ignore them in the actual implementation of the project. Public-sector organizations are often notoriously poor at proper contract administration or at being a competent partner, especially after the development of a new facility (i.e. during ongoing operations).

Implementation issues are different depending on the phase of the project. Conceptually, there are three phases:

- development/construction,
- operations, and
- end of term.

Particular challenges are associated with the end of term of a project if the project's useful life is significantly longer than the term of the agreement. Conversely, other challenges must be addressed if the project's useful life is significantly less than the term of the agreement.

Public-sector organizations historically do a good job of monitoring the development/construction commitments of a successful bidder. The public sector has traditionally had direct responsibility for such activities, and well-defined processes and procedures to ensure that the commitments are delivered. However, P3 development/construction administration can be more ambiguous and more difficult.

Ensuring private-sector commitments during ongoing operations is equally challenging. Once the "excitement" of the development phase has passed, the public-sector organization typically views monitoring during ongoing operations as a routine task to be handled by an individual of lower qualifications. As a result, private-sector parties are often able to erode various commitments, particularly with respect to service levels and operations.

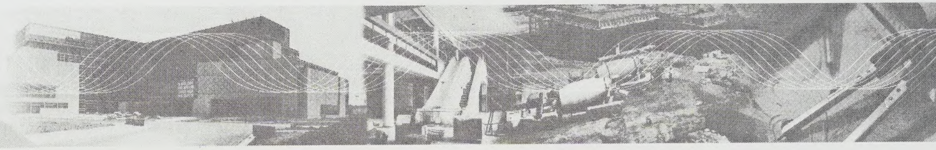
The key challenge with respect to end-of-term conditions is to ensure that appropriate operations are adhered to in the period leading up to the end of term. If there is a commitment contractually to continue ongoing maintenance, the private-sector partner has little incentive to do so as the end of the term arises. Appropriate care must be devoted to ensure that these commitments are fulfilled.

4
Conclusion

Chapters 2 and 3 examined how the public and private sectors might select a P3 project and, once the project is selected, how it might be implemented. There are a number of considerations, from developing the right criteria to establishing an appropriate evaluation process, which will affect the success of the project. This guide describes the process primarily from the public sector point of view, but also so attempts to provide private-sector organizations wishing to embark on a P3 project with a better understanding of the public sector's perspective.

In summary, readers of this guide should consider the following key lessons.

- A P3 approach works only if the partners know what they are getting into and what they expect to get out of it.
- A P3 project must provide a winning business case for the private sector and, at the same time, achieve public-sector goals.
- Risks must be allocated to the appropriate body.
- The processes used must be open, fair and transparent.
- The project scope must be well defined.



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